

IN THE MATTER OF	:	BEFORE THE
<b>ST. JOHN'S CEMETERY OF</b>	:	HOWARD COUNTY
<b>HOWARD COUNTY, INC.</b>	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 04-044C&V

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### **DECISION AND ORDER**

On June 19, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of St. John's Cemetery of Howard County, Inc., Petitioner, for a conditional use for a cemetery in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.N.11 of the Howard County Zoning Regulations (the "Zoning Regulations").<sup>1</sup>

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Fred L. Coover, Esquire, represented the Petitioner. No one testified in support of the petition. No one appeared in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find the following facts:

1. The subject property, known as 3480 St. Johns Lane, is located in the 2<sup>nd</sup> Election District on the west side of St. Johns Lane south of U. S. Route 40 in Ellicott City, Maryland (the "Property"). The Property is referenced on Tax Map 2, Grid 11, as Parcels 759 and 110.

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<sup>1</sup> The Petitioner also applied for a variance from the required structure and use setback for certain graves on the Property. As a result of a change in the Regulations (see ZRA 67), the variance is no longer needed and the variance petition was withdrawn.

2. The Property is irregular in shape and consists of about 20.334 acres. The Property has about 1,400 feet of frontage on St. Johns Lane. At its greatest width, the Property is about 1,100 feet wide.<sup>2</sup>

The Property is the site of a large cemetery which has been in existence since at least 1877. The cemetery, which contains about 400 graves, is listed in the Howard County Inventory as Site No. 24-3. No graves with headstones or permanent markers greater than three feet in height are located within 20 feet from the property lines of adjacent residentially zoned lots in residential use.

The Property is also improved with three structures. A 1½ story stone superintendent's residence is located on the north side of the cemetery entrance from St. Johns Lane, which is located about 800 south of Route 40. A one-story caretaker's residence is located on the south side of the cemetery entrance. In the center of the site is a small frame barn which is in a state of disrepair.

3. Vicinal properties include:

(a) To the north of the Property are several B-2 zoned lots which are improved with various commercial uses such as banks, retail, and a gasoline service station and which front on Route 40.

(b) To the northeast across St. Johns Lane are several B-2 zoned properties developed with commercial and retail uses. To the southeast across St. Johns Lane are R-20 zoned lots improved with single-family detached dwellings.

(c) Abutting the southeast side of the Property is Parcel 111, which is improved with

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<sup>2</sup> A portion of the northeast corner of the Property is zoned B-2 and is leased to and used by a separate entity as a gasoline service station conditional use (see BA Case No. 886-C). That portion of the Property may not be considered a part of the requested cemetery conditional use site.

the Frederick Crossing Shopping Center.

(d) To the west and southwest of the Property is Parcel 535, which is improved with the St. John's Episcopal Church.

4. The Petitioner proposes to continue to operate a cemetery on the Property. The Petitioner also proposes to raze the existing barn and erect two new structures: (1) a 24' by 24' one-story frame office building with a conference and assembly area, kitchenette and restroom; and (2) a 40' by 60' one-story equipment storage and maintenance building. The office building will be located next to the west side of the existing superintendent's dwelling on the east side of the Property. The storage and maintenance building will be located in the northwest portion of the lot about 20 feet from the adjoining church property line and will be screened by existing landscaping.

The new office building will be used as general administrative offices for cemetery staff, an indoor assembly area for customers and guests, and a public restroom. The larger building will be used for the indoor storage and maintenance of cemetery equipment.

The cemetery will operate seven days a week from 7:30 a.m. through 7:30 p.m. on an as-needed basis. The cemetery employs three persons – a resident superintendent, a resident caretaker, and a bookkeeper/secretary.

5. The Property is served by public water and sewer facilities. The 2000 General Plan designates the Property as "Residential Area." St. Johns Lane is a minor collector with four travel lanes within a variable width right-of-way. The posted speed limit is 30 mph. The DPZ report indicates that, although sight distance from the existing driveway may be somewhat obstructed, it is sufficient given the site's low intensity of use.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude as follows:

**I. General Criteria for Conditional Uses (Section 131.B).**

A. General Plan: The Howard County General Plan designates the area in which the Property is located as "Residential Area." Cemeteries are commonly located within residential areas. The subject Property has been used as a cemetery for nearly 130 years. The use of the proposed buildings will be of relatively low intensity given the relatively large 20.84 acre site. No other improvements are proposed. The Property is located on a four-lane minor collector near the intersection of U.S. Route 40. Accordingly, the nature and intensity of the operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

B. Adverse Effect: The Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a cemetery in the R-20 district:

1. Physical Conditions. The proposal consists of the continued operation of a 130-year old cemetery and the construction of a small office/assembly building and a storage maintenance building. The proposed use will consist of activities that are normally associated with a cemetery and have been conducted on the site for a very long time without exceptional adverse effects. The proposed buildings will be used as office space, for small gatherings, and storage and maintenance,

and will not generate inordinate noise, odors, or other effects. No other new structures, vehicles, equipment, materials or outdoor lighting will be added. The use therefore will not generate excessive noise, dust, fumes odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a cemetery an R-20 zoning district, in accordance with Section 131.B.2.a.

2. Structures and Landscaping. In addition to the existing building located near the east entrance to the Property, two new buildings will be constructed on the site. The proposed 24' by 24' office building will be located next to the west side of the existing superintendent's dwelling on the east side of the Property and will be screened from the road by the superintendent's residence. The larger storage and maintenance building will be located in the northwest portion of the lot about 20 feet from the adjoining church property line and will be screened by existing landscaping. The buildings will be well separated from any residential use. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The Petitioner proposes to continue to use the existing entrance and driveway. No specific parking requirements are set forth in the Zoning Regulations. Given the 20+acre size of the site, parking areas and driveways will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. The existing driveway has provided safe access and adequate sight distance and will continue to do so, given the low intensity of the proposed use, in compliance with Section 131.B.2.d.

**II. Specific Criteria for Cemeteries and Mausoleums (Section 131.N.11).**

1. No graves with headstones or permanent markers greater than three feet in height are located within 20 feet from the property lines of adjacent residentially zoned lots in residential use, in accordance with Section 131.N.11.a.

2. The cemetery is adequately screened and buffered by distance and existing landscaping. No additional walls, fences or planting of shrubbery, trees or vines to afford adequate screening is required pursuant to Section 131.N.11.b.

3. No future construction of accessory structures such as mausoleums, vaults, columbaria, or sheds is proposed; therefore, Section 131.N.11.c does not apply.

**ORDER**

Based upon the foregoing, it is this **2<sup>nd</sup> day of August 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of St. John's Cemetery of Howard County, Inc., Petitioner, for a conditional use for a cemetery in an R-20 (Residential: Single) Zoning District is hereby **GRANTED**;

**Provided, however**, that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted and not to any other activities, uses, structures, or additions on the Property; and it is further **ORDERED**:

That the filing fees paid by the Petitioner for BA Case No. 04-044C&V be refunded to the Petitioner.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

\_\_\_\_\_  
Thomas P. Carbo

Date Mailed: \_\_\_\_\_

**Notice**: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.